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Nos. 02-241 & 02-516

IN THE

Supreme Court of the United States

BARBARA GRUTTER,
Petitioner,

v.

LEE BOLLINGER, *et al.*,
Respondents.

JENNIFER GRATZ, *et al.*,
Petitioners,

v.

LEE BOLLINGER, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICI CURIAE* NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, ASIAN LAW CAUCUS, ASIAN PACIFIC AMERICAN LEGAL CENTER, *ET AL.*, IN SUPPORT OF RESPONDENTS

KAREN K. NARASAKI
VINCENT A. ENG
TERRY M. AO
NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM
1140 Connecticut Ave., NW
Suite 1200
Washington, DC 20036
(202) 296-2300

MARK A. PACKMAN
Counsel of Record
JONATHAN M. COHEN
ROBERT THORON TAYLOR
JOEL E. GREER
GILBERT HEINTZ & RANDOLPH LLP
1100 New York Ave., NW
Suite 700
Washington, DC 20005
(202) 772-2320

Counsel for Amici Curiae
[Additional *Amici* listed on inside cover]

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Asian American Legal Center, Inc.

Asian American Legal Defense and Education Fund

Asian Law Alliance

Asian Pacific American Labor Alliance (AFL-CIO)

Asian Pacific Islander Legal Outreach
(formerly Nihonmachi Legal Outreach)

Association of Asian Indian Women in Ohio

Association of Asian Pacific Community Health Organizations

Chinese for Affirmative Action

D.C. Asians for Peace and Justice

Filipino Civil Rights Advocates

Filipinos for Affirmative Action

Hmong National Development, Inc.

Japanese American Citizens League

Leadership Education for Asian Pacifics, Inc.

National Asian Pacific American Bar Association

National Asian Pacific American Women's Forum

National Association for the Education and Advancement
of Cambodian, Laotian and Vietnamese Americans

National Coalition for Asian Pacific American
Community Development, Inc.

National Council of Asian American Business Associations

National Federation of Filipino American Associations

National Korean American Service & Education Consortium

Organization of Chinese Americans

South Asian Bar Association of Southern California

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TABLE OF AUTHORITIES

Federal Cases

Adarand Contractors, Inc. v. Pena, 515 U.S. 200 (1995)..... 22
Gratz v. Bollinger, 122 F. Supp. 2d 811 (E.D. Mich. 2000) 4, 10, 12
Grutter v. Bollinger, 137 F. Supp. 2d 821 (E.D. Mich. 2001) 12
Grutter v. Bollinger, 288 F.3d 732 (6th Cir. 2002) (*en banc*)..... 3, 4, 6, 7, 9, 10, 12
Korematsu v. United States, 323 U.S. 214 (1944) 22
Marks v. United States, 430 U.S. 188 (1977) 9
Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)..... 9
Regents of the University of California v. Bakke, 438 U.S. 265 (1978) 9

Federal Statutes and Rules

Pub. L. 100-383, § 2(a), 102 Stat. 903-904 22
Supreme Court Rule 37.3(a) 1

Federal Regulations

Proposed Reforms to Affirmative Action in Federal Procurement, *Appendix - The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey*, 61 Fed. Reg. 26042, 26050-63 (May 23, 1996) 21

Books, Reports And Periodicals

Asian Americans and Pacific Islanders Joint Task Force, *AAPI Federal Employment and Glass Ceiling Issues* (2001) 20

"Asian Pacific American Agenda: Asian Americans on the Issues," *Asian Week* (August 23, 1996) 16

Brest, Paul et al., *Affirmative Action for Whom?*, 47 Stan. L. Rev. 855 (1995) 19

Chang, Mitchell, "The Positive Educational Effects of Racial Diversity on Campus, " in *Diversity Challenged: Evidence on the Impact of Affirmative Action* (Gary Orfield and Michael Kurlaender eds., 2001) 7

Chen, Terri Yuh-lin, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 Asian L.J. 69 (2000) 2, 23

Chew, Pat K., *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 Asian L.J. 7 (1996) 20

Committee of 100, *American Attitudes Toward Chinese Americans and Asians* (2001) 21, 22

Census 2000 Fact Sheet: Residential Segregation in United States Metropolitan Areas (April 27, 2001) 14

"Eyes on Michigan: the California Case," *Daily Bruin*, (Feb. 7, 2003) 15

Equal Employment Opportunity Commission, *Job Patterns for Minorities and Women in Private Industry* (1998), *available at* http://www.eeoc.gov/stats/jobpat/1998/tables-1.html 19

Kang, Jerry, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926 (1993) 22, 23

Kidder, William C., *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 Asian L.J. 29 (2000) 15

Kidder, William C., *Affirmative Action in Higher Education: Recent Developments in Litigation, Admissions and Diversity Research*, 12 Berkeley La Raza L.J. 173 (2001) 16

Korn/Ferry International, *Executive Profile: A Decade of Change in Corporate Leadership* (1990) 20

Kurlaender, Michael & John T. Yun, "Is Diversity a Compelling Educational Interest? Evidence from Louisville," in *Diversity Challenged: Evidence on the Impact of Affirmative Action* (Gary Orfield and Michael Kurlaender eds., 2001) 7, 8

LEAP Asian Pacific American Public Policy Inst. & UCLA Asian American Studies Ctr., *The State of Asian Pacific America* (1993) 19

Lee, Cynthia Kwei Yung, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 Hastings Women's L.J. 165 (1995) 22

Lien, Pei-te et al., *A Summary Report of the Pilot Study of the National Asian American Political Survey* (2001) 16

National Asian Pacific American Legal Consortium, *Audit of Violence Against Asian Pacific Americans* (2000) 23

National Science Foundation, *Women, Minorities, and Persons with Disabilities in Science and Engineering* (1998), *available at* http://www.nsf.gov/sbe/srs/nsf99338/pdfstart.html 20

Orfield, Gary & Dean Whitla, "Diversity and Legal Education: Student Experiences in Leading Law Schools," in *Diversity Challenged: Evidence on the Impact of Affirmative Action*, (Gary Orfield and

Michael Kurlaender eds., 2001) 7
Thernstrom, Stephan, *Farewell to Preferences?*, 130 Pub. Interest 34 (1998) 17
Thernstrom, Stephan and Abigail Thernstrom, *Reflections on the Shape of the River*, 46 UCLA L. Rev. 1583 (1999) 14
Tienda, Marta et al., *Closing the Gap? Admissions and Enrollments at the Texas Public Flagships Before and After Affirmative Action* (2003) 13, 15
Turnbull, Spencer K., *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 Asian Pac. Am. L.J. 72 (2001) 22
University of Michigan Law School, Report and Recommendations of the Admissions Committee (1992) 8, 11-12, 14
Wang, Theodore Hsien, *Swallowing Bitterness: The Impact of the California Civil Rights Initiative on Asian Pacific Americans*, Ann. Survey Am. L. 463 (1995) 21
White House Initiative on Asian Americans and Pacific Islanders, *A People Looking Forward, Action for Access and Partnership in the 21st Century* (2001) 20
Woo, Deborah, *Glass Ceilings and Asian Americans: The New Face of Workplace Barriers* (2000) ...18, 19, 20
Wu, Diana Ting Liu, *Asian Pacific Americans in the Workplace* (1997) 18, 19
Wu, Frank, *Yellow: Race in America Beyond Black and White* (2001) 17, 18, 23

Miscellaneous

"Q&A re University of Michigan Admissions Policies", *available at* http://www.umich.edu/~urel/admissions /faqs/q&a.html 8, 11, 14
"Description of University of Michigan Undergraduate Admissions Policy," *available at* http://www.umich. edu/~urel/admissions/faqs/uapolicy.html 11
Press Release, Asian Pacific Legal Center of Southern California, Asian Pacific American Voters in Southern California Vote Overwhelmingly For President Clinton and Against Prop. 209 (Nov. 6, 1996) 16
Proof Brief of Defendants-Appellants, *Grutter v. Bollinger*, No. 01-1447 (6th Cir. May 24, 2001) 12-13
Chen, Edward M., "Speech Presented at the California Law Review Dinner" (April 11, 2002).....20

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The National Asian Pacific American Legal Consortium ("NAPALC") is a national, nonprofit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans. NAPALC is committed to supporting affirmative action as a way of ensuring equal opportunities for women and minorities. Joining NAPALC as *amici curiae* in this brief are 27 public interest legal and civil rights organizations listed in the Appendix to this brief that also are dedicated to advancing the interests and protecting the rights of Asian Pacific Americans (collectively, "*Amici*"). *Amici* include Japanese, Chinese, Filipino, Korean, Hmong, South Asian, Pacific Islander, Cambodian, Laotian, and Vietnamese American public-interest groups. *Amici* also include some of the largest and oldest Asian Pacific American organizations in this country that are involved in challenging racial discrimination, safeguarding civil rights, and advocating for affirmative action programs. *Amici* thus have an important and substantial interest in this case, which addresses the constitutionality of the use by the University of Michigan ("Michigan") of race-conscious admission procedures to offer students better educational opportunities by providing a diverse academic community.

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[1] In accordance with Supreme Court Rule 37.3(a), *Amici Curiae* have filed with the Clerk of the Court letters from Petitioners and Respondents consenting to the filing of this brief. No person or entity other than *Amici Curiae,* their members, or their counsel made a monetary contribution to the preparation or submission of the brief, and no counsel for Petitioners or Respondents had any role in authoring this brief.

SUMMARY OF ARGUMENT

Asian Pacific Americans bring a unique perspective to this case. Unlike African Americans, Hispanics, and Native Americans, Asian Pacific Americans are not specifically identified as under-represented minorities in Michigan's race-conscious admission procedures. Nonetheless, *Amici* and their Asian Pacific American constituencies support Michigan's race-conscious approach. *Amici* do so in spite of the contention of Petitioners and their supporters that Michigan's affirmative action programs victimize Asian Pacific Americans. *Amici* submit this brief to rebut Petitioners' contention.

First, contrary to Petitioners' contention, Asian Pacific American students, like all students, benefit significantly from Michigan's race-conscious admission procedures. Ample studies have shown that exposure to students from a wide range of backgrounds enhances the educational experiences of all students, whether Caucasian American or minority. Thus, Asian Pacific American students, and all other students, benefit from racial and ethnic diversity at Michigan. Achieving such diversity constitutes a compelling governmental interest.

Second, again contrary to Petitioners' claim, Michigan's admission procedures are not rigid quotas, but rather are flexible processes that allow consideration not simply of whether an applicant is African American, Hispanic, or Native American, but also of a variety of factors that reflect a unique background or distinctive personal circumstances. For example, the admission policy of the University of Michigan Law School ("Law School") expressly identifies a broad array of factors that may warrant preferential consideration on the basis of diversity, including "'an Olympic gold medal, a Ph. D. in physics, the attainment of

age 50 in a class that otherwise lacked anyone over 30, or the experience of having been a Vietnamese boat person.'" *Grutter v. Bollinger*, 288 F.3d 732, 747 (6th Cir. 2002) (*en banc*) (quoting Law School Admissions Policy). This flexibility allows Michigan's affirmative action programs to account for the circumstances facing Asian Pacific American applicants and all other applicants. Consequently, Asian Pacific Americans are not harmed by Michigan's race-conscious admission procedures. This flexibility also demonstrates that Michigan's race-conscious admission procedures are narrowly tailored to achieve the compelling governmental interest in maintaining racial diversity in public education.

Third, empirical evidence refutes the suggestion of Petitioners and their supporters that Asian Pacific Americans would gain substantially from affirmative action's demise. For example, following the abolition of affirmative action programs in California during the 1990s, Asian Pacific American enrollment in state law schools did not increase significantly, as one would have expected if Asian Pacific Americans actually had been victimized by these programs. Instead, it remained virtually unchanged.

Thus, despite the claims of Petitioners and their supporters, Asian Pacific Americans are not harmed by Michigan's use of race-conscious admission procedures, even though Asian Pacific Americans are not specifically identified as under-represented minorities by those procedures. *Amici* emphasize, however, that at other schools and in other contexts, such as employment and public contracting, Asian Pacific Americans should be included in the category of under-represented minorities in affirmative action programs. The arguments of certain opponents of affirmative action that Asian Pacific Americans do not need such programs should be rejected because these arguments

rest on the myth that Asian Pacific Americans no longer suffer from racial discrimination in American society and that Asian Pacific Americans have been able to succeed despite past racism and prejudice. This "model minority" myth is empirically false. Moreover, it stems from stereotyping and ignores current discrimination against Asian Pacific Americans. Consequently, this myth provides no support to those who contend that affirmative action is no longer necessary to promote acceptance of and positive interaction with Asian Pacific Americans (or other minority groups).

For all of these reasons, *Amici* support Michigan's affirmative action programs. Accordingly, *Amici* respectfully request that this Court affirm the judgment of the Sixth Circuit in *Grutter v. Bollinger* and reverse the District Court's decision in *Gratz v. Bollinger.*

ARGUMENT

I. ASIAN PACIFIC AMERICANS ARE NOT HARMED BY MICHIGAN'S RACE-CONSCIOUS ADMISSION PROCEDURES

Petitioners and their supporters claim that Michigan's race-conscious admission procedures use unconstitutional quotas for African Americans, Hispanics, and Native Americans. Petitioners and their supporters further assert that these procedures discriminate against other racial and ethnic groups – including "especially Asian Americans." Brief for the Petitioner, *Grutter v. Bollinger* ("Pet. Brief *Grutter"),* at 39 ("disadvantage on the basis of race works not only against Caucasian Americans, but also against other groups, including minority groups historically discriminated against, especially Asian Americans"); *see id.* at 10 ("the odds favoring students from African American, Mexican

American, Native American, and Puerto Rican groups are always 'enormously' large relative to Caucasian Americans, and other groups such as Asian Americans") (citations omitted); Brief of the Asian American Legal Foundation as *Amicus Curiae* in Support of Petitioners ("AALF Brief"), at 2 ("diversity-based admission schemes are almost always used to exclude Asian Americans from educational institutions"); *id.* ("By granting preferences to applicants from certain ethnic groups, the admissions programs of the University of Michigan college and law school . . . place racial barriers before Chinese Americans and other 'non-preferred' individuals that are unjustified by any remedial purpose."); Brief for the United States as *Amicus Curiae* Supporting Petitioner, *Grutter v. Bollinger,* at 35 ("As Judge Boggs pointed out in his dissent, '[i]t is clear from the Law School's statistics that under-represented minority students are nearly automatically admitted in zones where white or Asian students with the same credentials are nearly automatically rejected.'").[2]

This attempted portrayal of Asian Pacific Americans as victims of Michigan's race-conscious admission processes is wrong for three reasons. First, Asian Pacific American students (and, indeed, students of all racial and ethnic groups) benefit from a diverse student body. Second, Michigan's program is sufficiently flexible to take into

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[2] *See also* Brief for the United States as *Amicus Curiae* Supporting Petitioner, *Grutter v. Bollinger,* at 31 ("By admitting racial minorities that are given weight by respondents in attaining their critical mass, respondents discriminate against other racial minorities that are deemed not to contribute to the critical mass."); Brief for the Petitioners, *Gratz v. Bollinger* ("Pet. Brief *Gratz*"), at 22-23 ("Like the formal quota in Bakke, the dual standard employed by the University [of Michigan College of Literature, Science and Arts] insulates members of the preferred racial and ethnic groups from competition from members of the disfavored racial groups.").

account the circumstances facing Asian Pacific American applicants. Under Michigan's flexible approach, Asian Pacific Americans are not harmed. Third, Petitioners' suggestion that Asian Pacific Americans would benefit substantially from the overturning of Michigan's affirmative action programs is empirically incorrect. We discuss each of these reasons in turn.

A. Asian Pacific American Students, Like All Students, Benefit from a Diverse Student Body

Although Asian Pacific Americans are not specifically identified as members of an under-represented group in Michigan's affirmative action programs, Asian Pacific American students, like all students, receive significant benefits from the diversity that results from Michigan's programs. *See Grutter*, 288 F.3d at 760 (Clay, J., concurring) (discussing Michigan's evidence regarding benefits of diversity). Indeed, as discussed in *Grutter*, Michigan's expert Professor Patricia Gurin concluded,

> "Students learn better in a diverse educational environment, and they are better prepared to become active participants in our pluralistic, democratic society once they leave such a setting. In fact, patterns of racial segregation and separation historically rooted in our national life can be broken by diversity experiences in higher education. . . .
>
> Racial diversity in a college or university student body provides the very features that research has determined are central to producing the conscious mode of thought

> educators demand from their students. This is particularly true at the University of Michigan, because most of the University's students come to Ann Arbor from segregated backgrounds."

Id. (quoting Professor Gurin's report).

Professor Gurin's conclusions are well supported by the findings of other researchers. Law students surveyed at Michigan and Harvard University report that racial and ethnic diversity broadens their intellectual perspective both in and outside the classroom and improves their ability to work and socialize with people of other races and ethnicities. *See* Gary Orfield and Dean Whitla, "Diversity and Legal Education: Student Experiences in Leading Law Schools," in *Diversity Challenged: Evidence on the Impact of Affirmative Action ("Diversity Challenged")* (Orfield and Kurlaender, eds., 2001) (copy of relevant pages lodged with Clerk of the Court). Similarly, racial diversity on university campuses has been shown to enhance students' educational experiences and to increase the likelihood that students will socialize across racial lines and discuss racial matters. *See* Mitchell Chang, "The Positive Educational Effects of Racial Diversity on Campus," in *Diversity Challenged* (copy of relevant pages lodged with Clerk of the Court). This in turn has a positive impact on student retention, overall college satisfaction, and intellectual and social self-confidence among students. *See id.*

In addition, racial diversity at all levels of education has been shown to have positive educational effects. For example, high school students receive substantial benefits, including greater willingness to live and work in diverse environments as well as improved critical thinking skills. *See, e.g.*, Michal Kurlaender and John T. Yun, "Is Diversity

a Compelling Educational Interest? Evidence from Louisville," in *Diversity Challenged* (copy of relevant pages lodged with Clerk of the Court). Racial diversity also helps high school students to sharpen their focus on future educational goals and deepens their understanding of civic principles. *See id.*

Michigan admission officials recognize these substantial benefits of providing students with a racially and ethnically diverse educational environment, and these officials depend on their admission procedures to produce this environment. *See* "Q&A re University of Michigan Admissions Policies," at http://www.umich.edu/~urel/admissions/faqs/q&a.html ("Michigan Admission Q&A") (visited on December 11, 2002); University of Michigan Law School, Report and Recommendations of the Admissions Committee 9-10 (1992) ("Law School Admission Policy") ("diversity . . . has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts. In particular we seek to admit students with distinctive perspectives and experiences as well as students who are particularly likely to assume . . . leadership roles in the bar and make . . . contributions to society"); *id.* at 12 (describing Michigan's "commitment to racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers").

In sum, diversity does not benefit only African Americans, Hispanics, and Native Americans at Michigan.

Instead, it benefits students of all races, including Asian Pacific Americans.[3]

B. Because Michigan's Race-Conscious Admission Procedures Are Flexible, and Consider a Variety of Factors, These Procedures Do Not Harm Asian Pacific Americans or Other Applicants

In addition to the benefits of diversity, there is a second reason that Asian Pacific Americans are not victimized by Michigan's race-conscious admission procedures. Far from being the rigid quotas portrayed by Petitioners, the procedures are flexible and thus allow Michigan to consider

[3] To uphold Michigan's efforts to promote diversity would be entirely consistent with *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), in which Justice Powell concluded that diversity is a compelling governmental interest. *See id.* at 314 (Opinion of Powell, J.) (stating that "the interest of diversity is compelling in the context of a university's admissions program"). Under *Marks v. United States*, 430 U.S. 188 (1977), Justice Powell's opinion "constitutes *Bakke's* holding and provides the governing standard here." *Grutter*, 288 F.3d at 741. Accordingly, upholding the constitutionality of Michigan's race-conscious admission procedures would follow a precedent that is a quarter of a century old and which has been relied upon by educators and courts alike. *See Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 856 (1992) (Opinion of O'Connor, Kennedy, and Souter, JJ.) (upholding *Roe v. Wade* because, among other things, "for two decades of economic and social developments," people have relied on the availability of legal abortion and because of "the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case"). Thus, upholding *Bakke* would not, as the Asian American Legal Foundation ("AALF") contends, create new precedent. Brief of the Asian American Legal Foundation as *Amicus Curiae* in Support of Petitioners ("AALF Brief"), at 3, 22-23. Nor, as the AALF also argues (*id.* at 3), would a ruling for Respondents lead to the establishment of racial quotas, which *Bakke* forbade as unconstitutional. *See* 438 U.S. at 319-20.

the circumstances facing Asian Pacific American applicants, as well as the circumstances facing students from other backgrounds.

Petitioners claim that Michigan maintains a "two track" system, with one track for "under-represented minorities" and the other for Caucasian Americans, Asian Pacific Americans, and other purportedly disfavored groups. *See* Pet. Brief *Gratz*, at 21; Pet. Brief *Grutter*, at 17. Petitioners' claim is incorrect. There is no "two track" system at Michigan in which certain minority applicants are considered separately from all other applicants. *See Gratz v. Bollinger*, 122 F. Supp. 2d 811, 829 (E.D. Mich. 2000) (stating that no separate review process exists for under-represented minority applications in the undergraduate college); *Grutter*, 288 F.3d at 746 (stating that under-represented minority Law School applicants are not insulated from competition with other applicants).[4]

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[4] Petitioners argue at length that Michigan's efforts to obtain "meaningful numbers" or a "critical mass" of under-represented minorities function as the equivalent of a quota. *See, e.g.*, Pet. Brief *Grutter*, at 40-41. As the Sixth Circuit stated, however, "the Law School's 'critical mass' is not the equivalent of a quota, because unlike Davis's reservation of sixteen spots for minority candidates, the Law School has no fixed goal or target. . . . Because *Bakke* allows institutions of higher education to pay some attention to the numbers and distribution of under-represented minority students, over time reliance on *Bakke* will always produce some percentage range of minority enrollment. . . . These results are the logical consequence of reliance on *Bakke*. . . . As such they cannot serve as the basis for a charge that the Law School's admissions policy is unconstitutional." *Grutter*, 288 F.3d at 747-48.

Moreover, the Law School's efforts to achieve "meaningful numbers" of minority students are necessary to avoid precisely the sort of stereotyping that Petitioners decry. If there are only a handful of students from under-represented minorities, other students inevitably will assume that all minorities think and act like that handful. It is only when "meaningful numbers" of minority students are present that other

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Michigan's admission officials consider each applicant according to many academic and non-academic criteria. When evaluating all applicants at both the undergraduate college and the Law School, admission officials place greatest weight upon applicants' grades and test scores. *See* "Description of University of Michigan Undergraduate Admissions Policy," at http://www.umich.edu/~urel/admissions/faqs/uapolicy.html ("Undergraduate Admission Policy") (visited on February 7, 2003); Law School Admission Policy, at 4. Nonetheless, in a variety of circumstances, Michigan admits certain applicants with grades or test scores lower than those of other applicants whom Michigan rejects.[5] In doing so, admission officials consider many other factors. These factors include not only race but also the quality of the application essay, the difficulty of the courses taken by the applicant, the state and geographic region where the applicant resides, a socioeconomically disadvantaged background, leadership, and personal achievement in music, athletics, or other fields of endeavor. *See* Undergraduate Admission Policy; Michigan Admission Q&A; Law School Admission Policy,

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students can learn of the broad variety of opinions and viewpoints minority students hold. As the Sixth Circuit observed, "The Law School's pursuit of a 'critical mass' of under-represented minority students also tracks the Harvard plan's pursuit of a class with meaningful numbers of minority students. Explaining its attention to the numbers and distribution of minority students, Harvard emphasized that '10 or 20 black students could not begin to bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States.'" *Id.* at 747 (citation omitted).

[5] For example, in 1997 (the year Petitioner Grutter applied to the Law School), over 450 Caucasian American applicants who were admitted had lower grades or test scores than Petitioner. *See Grutter* Trial Ex. 137 (Larntz Supp. Rpt. at 38).

at 5-6, 10-13; *see also Grutter*, 288 F.3d at 736-37, 746-47 (stating that law school admission officials examine each application individually and consider many academic and non-academic factors); *Gratz*, 122 F. Supp. 2d at 828-29 (stating that undergraduate college considers applicants according to numerous factors). In evaluating these factors, Michigan seeks to enroll a diverse student body, but diversity is by no means limited to under-represented minorities.

For instance, the Law School's admission policy expressly provides a broad range of factors that can serve as a basis for diversity admission, including "an Olympic gold medal, a Ph. D. in physics, the attainment of age 50 in a class that otherwise lacked anyone over 30, or the experience of having been a Vietnamese boat person." *Grutter*, 288 F.3d at 747 (quoting Law School Admission Policy). Thus, Michigan's programs provide sufficient flexibility to take into account, among other things, the circumstances faced by Asian Pacific Americans.

Moreover, in this case, Michigan's decision to treat Asian Pacific Americans differently from under-represented minorities is justified by the fact that Michigan already admits Asian Pacific Americans in significant numbers. *Grutter v. Bollinger*, 137 F. Supp. 2d 821, 835 n.15 (E.D. Mich. 2001) (citing testimony that Law School Admission Policy did not mention Asian Pacific Americans because the Law School was admitting significant numbers of them).

If Law School officials believe that they are having difficulty enrolling Asian Pacific Americans (or any other racial or ethnic group) without special attention to their race or ethnicity, the admission procedures allow the officials to pay special attention to that factor. *See* Proof Brief of Defendants-Appellants, *Grutter v. Bollinger*, No. 01-1447, at

50 n.33 (6th Cir. May 24, 2001) (citing testimony of Dean Jeffrey Lehman). This flexibility demonstrates that Michigan's race-conscious admission procedures do not victimize Asian Pacific Americans (or any other racial or ethnic group) and are narrowly tailored to achieve the compelling governmental interest in maintaining racial diversity in public education.[6]

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[6] This flexibility also rebuts Petitioner's claim (Pet. Brief *Grutter*, at 43) that Michigan illogically categorizes Asian Pacific Americans as an "undifferentiated mass[]" although "one could easily identify dozens of separate racial or ethnic groups contained" in that category. Likewise, this flexibility, which permits consideration of the circumstances each applicant faces, rebuts the contention of the Asian American Legal Foundation (AALF Brief, at 20) that Asian Pacific Americans and people of all races are "oppress[ed]" by race-conscious affirmative action that "emphasizes the group over the individual."

Moreover, the flexibility of Michigan's admission procedures attests to their superiority over plans used in Texas and Florida that the United States advocates as race-neutral alternatives to Michigan's program. *See* Brief for the United States as *Amicus Curiae* Supporting Petitioner, *Grutter v. Bollinger*, at 16-27. Because these plans oblige officials to admit students based on a numerical system (*e.g.*, the top 10 percent of all high school students in the state), they do not provide students with as good an opportunity to learn in a diverse environment as Michigan's flexible, multi-factor procedures. *See, e.g.*, Tienda et al., *Closing the Gap? Admissions and Enrollments at the Texas Public Flagships Before and After Affirmative Action* (2003) ("*Closing the Gap?*") (emphasizing that Texas's plan, which guarantees college admission to the top 10 percent of high school graduates in the state based on their grades, is not an alternative to race-conscious admission procedures for educational institutions striving to diversify their student bodies) (copy lodged with the Clerk of the Court). To the extent such plans produce racial diversity, they do so through reliance on continued residential and school segregation throughout the state in which the system applies. In other words, because schools tend to be segregated by race or ethnicity, a plan that admits the top 10 percent of the students from each school will mean that, at some schools the top 10 percent will be overwhelmingly Caucasian American, whereas at other schools it will be heavily African American. Asian Pacific Americans, however, are less segregated than other historically disadvantaged racial and ethnic groups and thus less

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Thus, race is but one factor among many that Michigan admission officials take into account in their effort to provide a diverse academic community. Admission officials' consideration of applicants according to many criteria affords these officials the latitude they need to make informed judgments about how best to advance Michigan's educational goals given the nature of American society and applicants' backgrounds. *See* Michigan Admission Q&A; Law School Admission Policy, at 11-12. Under this flexible, multi-factor approach, Asian Pacific Americans and other applicants are not victimized.

C. Empirical Evidence Refutes Petitioners' Suggestion That Asian Pacific Americans Would Significantly Benefit from the Elimination of Michigan's Race-Conscious Admission Procedures

By emphasizing the detriment Asian Pacific Americans allegedly suffer as the result of affirmative action, Petitioners and their supporters imply that Asian Pacific Americans will gain substantially if race-conscious admission procedures are eliminated. Indeed, some prominent affirmative action critics assert that Asian Pacific Americans stand to gain the most from affirmative action's demise. *See* Stephan Thernstrom and Abigail Thernstrom, *Reflections on the Shape of the River*, 46 UCLA L. Rev. 1583, 1629 (1999) (asserting that Asian Pacific Americans derive the greatest

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(... Continued)
likely to be aided by such plans. (*See Census 2000 Fact Sheet: Residential Segregation in United States Metropolitan Areas* 1 (April 27, 2001) ("The segregation of Asian/Pacific Islanders is lower than [African Americans or Hispanic Americans] and declined in most [Metropolitan Statistical Areas].").

benefit when race-conscious admission policies are eliminated).

The empirical evidence, however, rebuts these suggestions. During the late 1990s, after California (home to the largest Asian Pacific American population of any U.S. state) banned affirmative action, enrollment of African Americans, Hispanics, and Native Americans at three state law schools decreased 13 percent (from 23 percent of first-year classes to 10 percent). *See* William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thernstrom's Rhetorical Acts*, 7 Asian L.J. 29, 45 (2000). *See also Daily Bruin*, "Eyes on Michigan: the California Case" (Feb. 7, 2003) (noting that only two African Americans graduated from UCLA's law school in 2002, a steep decrease from the period preceding the ban). Enrollment of Asian Pacific Americans in these state law schools, however, did not increase accordingly; to the contrary, it rose only one percent, and the enrollment of Filipino Americans plummeted. *See* Kidder, 7 Asian L.J. at 39 (Asian Pacific Americans "constituted 18.3 percent of UC Law School classes in 1997-99, compared to 17.4 percent for 1994-96"). By contrast, Caucasian Americans saw their enrollment figures increase by approximately 12 percent. Caucasian Americans accounted for 59.8 percent of enrollment in the state law schools during the three years before the ban, but 71.7 percent after the ban. *Id.* at 44.[7]

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[7] Further, mixed evidence has emerged about the effect on Asian Pacific Americans after affirmative action was banned in Texas in the mid-1990s. After the ban, fewer Asian Pacific Americans enrolled as undergraduates at one of Texas's two flagship public universities, while more Asian Pacific Americans enrolled at the other. *See Closing the Gap?*, at 17. At the University of Texas Law School, Asian Pacific American enrollments were virtually unaffected, with an average of 30

(Continued ...)

In sum, Petitioners and their supporters are wrong to contend that Michigan's race-conscious admission procedures harm Asian Pacific Americans. Rather than being victimized by Michigan's affirmative action programs, Asian Pacific American students, like all students, receive significant benefits from Michigan's diverse educational environment. Further, Michigan's race-conscious admission procedures are not rigid quotas, but instead are flexible procedures that take into account many facts about each applicant, including the circumstances faced by Asian Pacific Americans. Lastly, empirical evidence refutes the suggestion of Petitioners and their supporters that Asian Pacific American students will gain substantially from affirmative action's demise.[8]

(... Continued)
Asian Pacific Americans enrolling before the ban and 31 after the ban. *See* William C. Kidder, *Affirmative Action in Higher Education: Recent Developments in Litigation, Admissions and Diversity Research*, 12 Berkeley La Raza L.J. 173, 215 (2001).

[8] Notably, Asian Pacific Americans themselves have expressed their clear support for affirmative action. In the 2001 Pilot Study of the National Asian Political Survey, 72 percent of Asian Pacific American respondents favored affirmative action. *See* Pei-te Lien et al., *A Summary Report of the Pilot Study of the National Asian American Political Survey* 10 (2001) (copy lodged with the Clerk of the Court). Other polls also reveal Asian Pacific Americans' support for affirmative action. *See, e.g.*, November 6, 1996 press release of Asian Pacific Legal Center of Southern California (discussing exit poll revealing that 76 percent of Asian Pacific American voters had voted against Proposition 209, which banned affirmative action) (copy lodged with the Clerk of the Court); "Asian Pacific American Agenda: Asian Americans on the Issues," *Asian Week* 14-17 (23-29 August 1996) (discussing how 57 percent of respondents favored affirmative action and 55 percent favored consideration of race in college admission) (copy lodged with Clerk of the Court).

II. NOTWITHSTANDING THE CLAIMS OF OPPONENTS OF AFFIRMATIVE ACTION THAT ASIAN PACIFIC AMERICANS NO LONGER SUFFER FROM DISCRIMINATION, IN APPROPRIATE CIRCUMSTANCES ASIAN PACIFIC AMERICANS SHOULD BE INCLUDED IN AFFIRMATIVE ACTION PLANS AS UNDER-REPRESENTED MINORITIES

As shown above, Asian Pacific Americans are not harmed by Michigan's flexible race-conscious admission procedures. The absence of harm in the present case, however, should not be allowed to obscure the fact that, at other schools, or in contexts other than education, it is entirely appropriate (and, in fact, necessary) to include Asian Pacific Americans in affirmative action programs as under-represented minorities. For example, Asian Pacific Americans frequently need such programs to ensure diversity in areas such as employment and public contracting. This is so despite the claims of certain opponents of affirmative action who assert that Asian Pacific Americans no longer suffer from racism in American society. *See, e.g.*, Stephan Thernstrom, *Farewell to Preferences?*, 130 Pub. Interest 34, 47-49 (1998) (referring to the claim that Asian Americans "face enormous problems in contemporary America because of their race" as a "fiction" and as a "silly notion"). Affirmative action opponents use this assertion to suggest that affirmative action is unnecessary for Asian Pacific Americans because they already have succeeded in American society. *See id.* at 41. Proponents of this myth imply that other minorities also would succeed if they acted more like Asian Pacific Americans. *See* Frank Wu, *Yellow: Race in America Beyond Black and White* 49, 59-67 (2001) ("*Yellow*") (criticizing myth that Asian Pacific Americans are a "model"

for other minority groups) (copy of relevant pages lodged with Clerk of the Court).

A substantial body of scholarly literature has debunked this "model minority" myth. *See, e.g.*, Wu, *Yellow*, at 39-59 (discussing the empirical and other flaws in this myth); Deborah Woo, *Glass Ceilings and Asian Americans: The New Face of Workplace Barriers* 34-38 (2000) (*"Glass Ceilings"*) (same) (copy of relevant pages lodged with Clerk of the Court). This myth is empirically false and ignores current discrimination and racism against Asian Pacific Americans. Moreover, this myth rests on stereotypes of Asian Pacific Americans as being more racially and culturally inclined to be hard-working and industrious than other minorities. *See* Wu, *Yellow*, at 45-47, 49, 62-63, 74-77 (discussing how the myth emerged with a 1966 article contrasting Japanese Americans and African Americans based on cultural differences, and criticizing the "model minority" myth as a form of stereotyping); Woo, *Glass Ceilings*, at 24, 33-38 (criticizing explanations of socioeconomic disparities between Asian Pacific Americans and other races based on cultural differences such as Confucianism).

First, the empirical evidence refutes the "model minority" myth. Contrary to the claims of the proponents of the myth, Asian Pacific Americans' socioeconomic status reflects the lingering effects of a long history of racial discrimination. Indeed, a higher percentage of Asian Pacific Americans than Caucasian Americans lives in poverty. *See* Diana Ting Liu Wu, *Asian Pacific Americans in the Workplace* 60 (1997) (copy of relevant pages lodged with Clerk of the Court). Asian Pacific Americans also have been unable to achieve income levels commensurate with their academic training and credentials. Asian Pacific Americans' median individual income is lower than that of Caucasian Americans and the

population as a whole for both high school and college graduates. *Id.* at 59-60. Further, discriminatory employment barriers resulting from the stereotype of Asian Pacific Americans as unassertive "grinds" who lack leadership skills have hindered Asian Pacific Americans' ability to advance to management positions. *See* Woo, *Glass Ceilings*, at 120 (discussing cultural stereotypes about Asian Pacific Americans' leadership ability); Paul Brest and Miranda Oshige, *Affirmative Action for Whom?*, 47 Stan. L. Rev. 855, 894 (1995) (noting negative stereotype that Asian Pacific Americans have poor leadership and interpersonal skills).[9] Asian Pacific Americans experience such "glass ceiling" barriers in many occupational contexts, including the

[9] Indeed, according to one study of all racial groups, Asian Pacific Americans "face the worst chance of being advanced into management positions." *See* LEAP Asian Pacific American Pub. Policy Inst. & UCLA Asian American Studies Ctr., *The State of Asian Pacific America* 215-216 (1993) (copy lodged with the Clerk of the Court). According to the Equal Employment Opportunity Commission ("EEOC"), a disparity exists for Asian Pacific Americans between the extent to which they occupy professional positions that require a college degree and the extent to which they hold management positions with responsibilities of supervision and policy setting. *See* EEOC, *Job Patterns for Minorities and Women in Private Industry* (1998), http://www.eeoc.gov/stats/jobpat/1998/tables-1.html) (visited Feb. 4, 2003). EEOC data shows that 29 percent of Asian Pacific American employees are professionals, but only 7.4 percent fill management positions. *See id.*

corporate sector,[10] the federal government,[11] science and engineering,[12] academia,[13] and the federal judiciary.[14] Asian Pacific Americans also suffer significant discrimination in the area of government contracting.[15]

Second, the "model minority" myth ignores the continuing existence of racism against Asian Pacific Americans in contemporary American society. In 2001, a comprehensive survey revealed that 71 percent of respondents held either decisively negative or partially negative attitudes toward Asian Americans. *See* Committee of 100, *American Attitudes Toward Chinese Americans and Asians* 56 (2001) ("*American Attitudes*") (copy lodged with Clerk of the Court).[16] Racial representations and stereotyping of Asian Pacific Americans, particularly in well-publicized instances where public figures or the mass

[10] Asian Pacific Americans comprised less than 0.3 percent of senior executives in the United States in 1990. *See* Korn/Ferry International *Executive Profile: A Decade of Change in Corporate Leadership* 23 (1990) (copy lodged with the Clerk of the Court). Today, Asian Pacific Americans comprise less than one percent of the board directorships of Fortune 500 companies. *See* White House Initiative on Asian Americans and Pacific Islanders, *A People Looking Forward, Action for Access and Partnership in the 21st Century* 60-61 (2001) ("*A People Looking Forward*"), http://www.aapi.gov/resources.htm.

[11] According to EEOC data, Asian Pacific Americans are under-represented in supervisory positions in 23 out of 25 federal departments or agencies (of those departments or agencies reporting this information) and constitute just 1.6 percent of the federal workforce's top managers and highest salaried employees. *See A People Looking Forward*, at 104-05; Asian Americans and Pacific Islanders Joint Task Force, *AAPI Federal Employment and Glass Ceiling Issues* 11 (2001) (copy lodged with the Clerk of the Court).

[12] Asian Pacific Americans are less likely than other minority groups to be in management positions in science and engineering fields. *See* National Science Foundation, *Women, Minorities, and Persons with Disabilities in Science and Engineering* (1998), at www.nsf.gov/sbe/srs/nsf99338/pdfstart.htm (visited on February 5, 2003).

[13] Among minorities, Asian Pacific Americans occupy the smallest number (under one percent) of top administrative positions at two- and four-year academic institutions combined. *See* Woo, *Glass Ceilings*, at 118-19. Asian Pacific Americans also have been under-represented in professional school faculties. For example, as of 1993, over 70 percent of American law schools had never hired an Asian Pacific American faculty member. *See* Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 Asian L.J. 7, 33 (1996).

[14] Of almost 1,600 active judges in the federal judiciary, only 0.9 percent are Asian Pacific American. *See* Edward M. Chen, "Speech Presented at the California Law Review Dinner," April 11, 2002 (unpublished) (copy lodged with the Clerk of the Court).

[15] *See* Notice: Proposed Reforms to Affirmative Action in Federal Procurement, *Appendix – The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey*, 61 Fed. Reg. 26042, 26050-63 (May 23, 1996) (citing congressional hearings since 1980 regarding discrimination against minority-owned business enterprises, and stating that Congress found that "11 percent of Asian business owners had experienced known instances of discrimination in the form of higher quotes from suppliers" (*id.* at 26061) and that Asian Pacific American-owned businesses receive, on average, only 60 cents of each dollar "of state and local expenditures that those firms would be expected to receive, based on their availability" (*id.* at 26061-62)); Theodore Hsien Wang, *Swallowing Bitterness: The Impact of the California Civil Rights Initiative on Asian Pacific Americans*, Ann. Surv. Am. L. 463, 469 (1995) (stating that numerous studies conducted by local governments in California concluded that Asian Pacific American businesses face significant discrimination in competition for government contracts).

[16] The study further found that, of those respondents holding decisively negative views, 34 percent said they would be upset if a significant number of Asian Americans moved into their neighborhood and 57 percent believed that increased Asian American population is bad for America. *See American Attitudes*, at 46, 50. Twenty three percent of respondents said that they would be "uncomfortable" if an Asian American were elected president. *Id.* at 40.

media express such attitudes,[17] reflect and reinforce an image of Asian Pacific Americans as "different," "foreign," and the "enemy," thus stigmatizing Asian Pacific Americans, heightening racial tension, and instigating discrimination.[18] *See* Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 Hastings Women's L.J. 165, 181 (1995) ("*Beyond Black and White*"); Spencer K. Turnbull, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 Asian Pac. Am. L.J. 72, 74-75 (2001); Terri Yuh-lin Chen, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 Asian L.J. 69, 72, 74-75 (2000) (*"Hate Violence"*); Jerry Kang, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926, 1930-1932 (1993).

[17] For example, during the trial of O.J. Simpson in the mid-1990s, Senator Alfonse D'Amato, using a crudely exaggerated Japanese accent on a radio talk show, mocked the handling of the case by Judge Lance Ito, a third generation Japanese American who speaks English without an accent. *See* Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 Hastings Women's L.J. 165, 175 (1995). Other incidents of such stereotyping in connection with the Simpson trial included racist epithets that appeared on national radio programs. *See id.* at 176.

[18] *See American Attitudes*, at 8. In the survey discussed above, 32 percent of the respondents said they believed that Chinese Americans are more loyal to China than to the United States, and 46 percent of those surveyed said they believed that "Chinese Americans passing on information to the Chinese government is a problem." *See American Attitudes*, at 18, 26. Such racial attitudes toward Japanese Americans underlay the federal government's internment of approximately 120,000 of these citizens during World War II. *See Korematsu v. United States*, 323 U.S. 214 (1944); *see also Adarand Contractors, Inc. v. Pena*, 515 U.S. 200, 236 (1995) (recognizing that the internment of Japanese Americans upheld in *Korematsu* was "illegitimate" and citing Congressional finding that this internment was "carried out without adequate security reasons . . . and [was] motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership" (quoting Pub. L. 100-383, § 2(a), 102 Stat. 903-904)).

Such negative racial representation and stereotyping also can incite violence directed against Asian Pacific Americans. *See* Chen, *Hate Violence*, 7 Asian L.J. at 74-76. Thousands of incidents of anti-Asian Pacific American violence have been documented over the last decade, including physical harassment, assault, attempted murder, and murder. *See* National Asian Pacific American Legal Consortium *2000 Audit of Violence Against Asian Pacific Americans* 9 (2001) (copy lodged with the Clerk of the Court).[19]

In sum, ample evidence exists to show the falsity of the notion that Asian Pacific Americans uniformly are a socioeconomic success story and that Asian Pacific Americans do not suffer from racism. The reality is that Asian Pacific Americans continue to suffer from racial discrimination in many aspects of life. In certain contexts, such as employment or public contracting, the effects of such discrimination are sufficiently egregious that Asian Pacific Americans should be specifically included in affirmative action programs to ensure diversity. In other contexts, such

[19] Moreover, the myth that Asian Pacific Americans uniformly are economically prosperous encourages criminals to target Asian Pacific Americans. *See* Jerry Kang, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926, 1929-30 (1993). The implied inferiority of other minority races that is inherent in the myth's depiction of Asian Pacific Americans as a success story also creates or intensifies resentment and scapegoating impulses, especially in competitive circumstances (*e.g.*, school) or in times of economic downturn. *See id.* at 1934-36 (explaining that publicity about supposed successes of Asian Pacific Americans implies to other minority groups "that, but for their incompetence or indolence, they too would be succeeding in America," thus fueling resentment against Asian Pacific Americans); Frank Wu, *Yellow: Race in America Beyond Black and White* 70-73 (2001) (explaining how myth of Asian Pacific American prosperity instigated racial tension in Detroit during the recession in 1982 and in Los Angeles during the 1992 riots following acquittal of the defendants accused of beating Rodney King).

as the present case, Asian Pacific Americans will receive fair treatment even if not expressly included in affirmative action programs because the flexibility of programs such as Michigan's takes into account the unique backgrounds and distinctive experiences of Asian Pacific American applicants. In either case, the Court should reject the efforts of those who rely on the "model minority" myth to suggest that Asian Pacific Americans (and other minority groups) do not need or are disadvantaged by affirmative action.

CONCLUSION

For all of these reasons, *Amici* support Michigan's affirmative action programs. Accordingly, *Amici* respectfully request that this Court affirm the judgment of the Sixth Circuit in *Grutter v. Bollinger* and reverse the District Court's decision in *Gratz v. Bollinger*.

Dated: February 14, 2003 Respectfully submitted,

KAREN K. NARASAKI
VINCENT A. ENG
TERRY M. AO
National Asian Pacific
American Legal Consortium
1140 Connecticut Ave., NW
Suite 1200
Washington, DC 20036
(202) 296-2300

MARK A. PACKMAN
Counsel of Record
JONATHAN M. COHEN
ROBERT THORON TAYLOR
JOEL E. GREER
Gilbert Heintz & Randolph LLP
1100 New York Ave., NW
Suite 700
Washington, DC 20005
(202) 772-2320

JOANNIE C. CHANG
Asian Law Caucus
939 Market Street, Suite 201
San Francisco, CA 94103
(415) 896-1701

STEWART KWOH
JULIE A. SU
Asian Pacific American Legal Center
1145 Wilshire Blvd., 2nd Floor
Los Angeles, CA 90017
(213) 977-7500

MARGARET FUNG
Asian American Legal
Defense and Education Fund
99 Hudson St.
New York, NY 10013
(212) 966-5932

VICTOR M. HWANG
IVY LEE
Asian Pacific Islander Legal
Outreach (formerly Nihonmachi
Legal Outreach)
1188 Franklin St., Suite 202
San Francisco, CA 94109
(415) 567-6255

TRANG Q. TRAN
Asian American Legal
Center Inc.
590 Lyric Centre
440 Louisiana
Houston, TX 77002
(713) 223-8855

MARI MATSUDA
EUGENE K. OHM
D.C. Asians for Peace and Justice
401 12th St. South #606
Arlington, VA 22202
(866) 248-7671

JAYASHREE Y. BIDARI
Association of Asian Indian
Women in Ohio
31031 Center Ridge Road,
Suite 6
Westlake, OH 44145
(440) 734-7788

KIRAN AHUJA
National Asian Pacific
American Women's Forum
P.O. Box 66124
Washington, DC 20035
(202) 423-4933

RUTHE CATOLICO ASHLEY
National Asian Pacific
American Bar Association
733 15th St., NW,
Suite 315
Washington, DC 20005
(202) 421-9039

BENJAMIN A. SANTOS
National Coalition for Asian
Pacific American Community
Development, Inc.
1001 Connecticut Ave., NW
Suite 730
Washington, DC 20036
(202) 223-2442

CHIRAG SHAH
South Asian Bar Association
of Southern California
6300 Wilshire Blvd.,
Suite 2000
Los Angeles, CA 90048
(323) 655-4700

RICHARD G. KONDA
Asian Law Alliance
180 Jackson St.
San Jose, CA 95112
(408) 287-9710

Attorneys for Amici Curiae

APPENDIX

List of *Amici Curiae*

The National Asian Pacific American Legal Consortium (NAPALC)
NAPALC is a national, nonprofit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans. NAPALC is committed to supporting affirmative action as a way of ensuring equal opportunities for women and minorities. NAPALC focuses on educating policymakers, corporations, institutions, and the general public on the facts and importance of affirmative action to the Asian Pacific community, and works with other civil rights organizations and policymakers to ensure that affirmative action programs are appropriate and effective and that they address Asian Pacific American concerns.

The Asian Law Caucus (ALC)
ALC is a nonprofit, public interest legal organization whose mission is to promote, advance, and represent the civil rights of Asian Pacific Islander communities. Founded in 1972, the ALC is the nation's oldest Asian Pacific Islander civil rights legal organization. The ALC has provided legal services and community education on affirmative action and discrimination, represented individuals in discrimination suits, and conducted local and regional policy advocacy on affirmative action. ALC is affiliated with the National Asian Pacific American Legal Consortium.

The Asian Pacific American Legal Center of Southern California (APALC)
APALC is the largest provider of direct legal services, civil rights advocacy, community education, and impact litigation for low-income Asian Pacific Americans in the country.

Since 1982, APALC has represented Asian Pacific Americans in a number of areas, including anti-discrimination, workers' rights, family law, immigration, and hate crimes. APALC is also a leader in bringing diverse communities together to improve race relations. APALC was co-counsel in a federal lawsuit to increase minority representation in the Los Angeles Police Department and has litigated numerous employment cases to defend the rights of working people. APALC is affiliated with the National Asian Pacific American Legal Consortium.

The Asian American Business Roundtable (AABR)
AABR was established in 1989 to help Asian Pacific and other minority-owned companies expand their market with the Federal government as well as the commercial sector by providing information that is accurate and timely to enable them to make informed decisions beneficial to their companies.

The Asian American Legal Center Inc. (AALC)
AALC is a nonprofit civil rights organization dedicated to advancing the civil and legal rights of Asian Americans and educating Asian Americans regarding those rights.

The Asian American Legal Defense and Education Fund (AALDEF)
AALDEF, founded in 1974, is a nonprofit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through litigation, legal advocacy, and dissemination of public information. Throughout its long history, AALDEF has supported affirmative action programs in higher education.

The Asian Law Alliance (ALA)
ALA, founded in 1977, is a nonprofit, public interest legal organization with the mission of providing equal access to

the justice system to the Asian and Pacific Islander communities in Santa Clara County, California. ALA has provided community education and legal services on affirmative action and discrimination issues.

The Asian Pacific American Labor Alliance (APALA)
APALA was founded in 1992 with the strong support of the AFL-CIO and is the first and only organization of Asian American and Pacific Islander trade unionists. Since its inception, APALA has been committed to organizing the unorganized, mobilizing the Asian American and Pacific Islander community for political action and mobilization, advocating for workers' rights, civil rights, and immigrant rights, and building alliances between labor and community. APALA has always been a strong supporter of programs that benefit the Asian American and Pacific Islander communities beyond labor issues.

The Asian Pacific Islander Legal Outreach (APILO)
Formerly Nihonmachi Legal Outreach, APILO is a 28-year-old nonprofit, social justice law firm serving the Asian American and Pacific Islander communities of the Greater Bay Area. With offices in San Francisco and Oakland, APILO's multilingual staff of 26 provides legal services to several thousand Asian Americans and Pacific Islanders each year in more than a dozen dialects and languages. Attorneys with APILO have previously participated in several federal impact and class action cases, including the defense of diversity in cases such as *Rios v. Regents of the University of California*.

The Association of Asian Indian Women in Ohio (AAIWO)
AAIWO is a nonprofit organization representing Asian Indian Women. Founded in 1989, AAIWO fosters and supports Asian Indian women to assume leadership roles

through networking and volunteering opportunities, and by encouraging new immigrants to mainstream into American society. AAIWO emphasizes education and provides scholarships to displaced homemakers and youth. AAIWO presents multicultural events to promote diversity and mutual understanding between different cultures. The AAIWO Helpline is staffed by professionals to help women and youth in crises. Membership and all services are free.

The Association of Asian Pacific Community Health Organizations (AAPCHO)
AAPCHO is a national association representing community health organizations dedicated to promoting advocacy, collaboration, and leadership that improves the health status and access of Asian Americans, Native Hawaiians, and Pacific Islanders within the United States, its territories, and freely associated states, primarily through our member community health clinics. Formed in 1987, AAPCHO advocates for policies and programs that will improve the provision of health care services that are community driven, financially affordable, linguistically accessible, and culturally appropriate. As a unified voice of its membership, AAPCHO shares its collective knowledge and experiences with policy makers at the national, state, and local levels.

Chinese for Affirmative Action (CAA)
CAA is a 33-year-old, membership-based, nonprofit organization whose mission is to defend and promote the civil rights of Asian Americans within the context of advancing a multiracial democracy in the United States. Throughout its history, CAA has engaged in policy advocacy to develop affirmative action programs in employment, education, and contracting in the San Francisco Bay Area.

D.C. Asians for Peace and Justice (DCAPJ)
DCAPJ is an Organization of Asian Americans in the greater Washington, D.C., area. DCAPJ is dedicated to civil rights, peace, and human rights for all. DCAPJ members are descended from all regions of the wide-ranging Asian diaspora, including South Asia, the Philippines, Korea, China, Japan, Okinawa, and Southeast Asia, and have direct experience with discrimination in the United States. DCAPJ therefore stands committed to affirmative action and equality in education

The Filipino Civil Rights Advocates (FilCRA)
FilCRA advocates for civil rights legislation that ensures equal opportunities and protection of all individuals regardless of race, national origin, ethnicity, gender, sexual orientation, age, and religion in employment, education, housing, and health, and supports legal causes that seek to protect and expand civil rights.

Filipinos for Affirmative Action (FAA)
FAA's mission is to build the Filipino community by addressing the needs of the most vulnerable through direct service and volunteerism, and by strengthening the Filipino community's capacity to participate as equals in the larger society.

Hmong National Development, Inc. (HND)
HND is a national, nonprofit organization developing capacity to ensure the full participation of Hmong in society. HND works with local and national organizations, public and private entities, and individuals to promote educational opportunities, to increase community capacity, and to develop resources for the well-being, growth, and full participation of Hmong in society.

The Japanese American Citizens League (JACL)
JACL, founded in 1929, is one of the oldest and largest Asian American nonprofit, nonpartisan organizations committed to securing and upholding the human and civil rights of Americans of Japanese ancestry and others. During World War II, Japanese Americans were denied constitutional rights and were incarcerated by the United States for no reason other than their ethnicity. Through JACL and other groups, those who were wrongfully forced into internment camps obtained redress, but discrimination against Japanese Americans remains an issue. Knowing the harm caused by discrimination and the importance of programs that counter the effects of discrimination, JACL has worked hard to educate people on the need for affirmative action programs.

Leadership Education for Asian Pacifics, Inc. (LEAP)
LEAP is a national, nonprofit, nonpartisan organization. Since 1982, LEAP has worked to achieve full participation and equality of Asian Pacific Americans through innovative leadership education programs, community outreach, and public policy initiatives designed to develop people, inform society, and empower communities.

The National Association for the Education and Advancement of Cambodian, Laotian, and Vietnamese Americans (NAFEA)
NAFEA is a nonprofit organization serving professionals who are Southeast Asian Americans and those who work with the Southeast Asian immigrant/American community in fields of education, social services, and community development. NAFEA seeks to provide and promote quality education for Southeast Asian immigrant/American students, improvement in the quality of life for Southeast Asian families, better understanding and appreciation for the diverse Southeast Asian backgrounds/languages and

cultures, and exchange of information among professionals and community members. NAFEA also seeks to provide the linkage between Southeast Asian American professionals and others working with the Southeast Asian community.

The National Asian Pacific American Bar Association (NAPABA)
NAPABA is the national professional association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA was incorporated in 1989 to represent and advocate on a national level for the interests of Asian Pacific American attorneys and their communities. To advance its goals, NAPABA monitors legislative developments and judicial appointments, and advocates on issues of importance to Asian Pacific American lawyers and the community.

The National Asian Pacific American Women's Forum (NAPAWF)
NAPAWF is a grassroots organization dedicated to forging a progressive movement for social and economic justice and the political empowerment of Asian and Pacific American women and girls. NAPAWF believes that affirmative action programs are necessary to address the myriad educational and economic obstacles facing APA women and girls.

The National Coalition for Asian Pacific American Community Development, Inc. (National CAPACD)
CAPACD is the first national advocacy organization dedicated to addressing the housing, economic, and community development needs of Asian Americans and Pacific Islanders. Our mission is to be a powerful voice for the unique community development needs of Asian American and Pacific Islander communities and to strengthen the capacity of community-based organizations to create neighborhoods of hope and opportunity. National

CAPACD is built on the principle that equal access in education and employment is essential to progress in all communities.

National Council of Asian American Business Associations (NCAABA)
The mission of NCAABA is to bring together the leaders of the Asian Pacific American Chambers of Commerce and business associations across the country to unite and develop the formation of a coalition that will address issues in the area of economic development, public contracting and private procurement policies, public policy, and fiscal impacts that affect APA business owners.

National Federation of Filipino American Associations (NaFFAA)
NaFFAA is a nonprofit, nonpartisan civil rights organization dedicated to promoting the interests and betterment of Filipinos and Filipino Americans in the United States. Founded in 1997, NaFFAA represents over 300 Filipino American community organizations and institutions. NaFFAA works in coalition with other civil rights organizations to ensure that Asian Pacific Americans enjoy equal opportunities in education, employment, and industry.

National Korean American Service & Education Consortium (NAKASEC)
NAKASEC seeks to empower and improve the lives of Korean Americans through advocating for their civil rights and full equality. By facilitating grassroots organizing and political/civic participation of Korean Americans, NAKASEC works toward building coalitions with other communities across the nation. NAKASEC also promotes the Korean American cultural heritage as part of diversity in multi-ethnic America. Founded by four local Korean American organizations with similar missions in 1994,

NAKASEC has been an active participant in immigrant and civil rights activism.

Organization of Chinese Americans, Inc. (OCA)
OCA is a nonprofit, nonpartisan civil rights organization dedicated to ensuring the equality of Chinese Americans, Asian Americans, and all Americans in the United States. Founded in 1973, OCA currently represents over 10,000 members in 50 chapters and 30 college affiliates. OCA has worked to ensure the Asian Pacific Americans are treated fairly and are accorded the rights guaranteed to them under the Constitution, federal, state, and local law.

South Asian Bar Association of Southern California (SABA-SC)
SABA-SC is a voluntary bar association of over 300 South Asian attorneys throughout Southern California.

Southeast Asia Resource Action Center (SEARAC)
SEARAC was founded in 1979 to facilitate the relocation of Southeast Asian refugees into American society as well as the development of nonprofit organizations led by and for Southeast Asians. SEARAC's principal mission is to advance the interests of Southeast Asian Americans by promoting community empowerment and leadership development, as well as advocating for and representing the diverse Southeast Asian American community on issues and concerns such as education, health care, safety, economic development, and civil rights.